

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: May 24, 2013

SUBJECT: FOLLOW-UP TO OMBUDSMAN'S REPORT – PROPERTY
ACQUISITION MANAGEMENT PLAN

ACTION ITEM

At the Board meeting of April 23, 2013, Commissioner Milczyn moved referral of Report 8(c) "Follow-Up to Ombudsman's Report – Property Acquisition Management Plan" to the May meeting to allow staff to report back on refinements to the property owner notice period referenced in Section 5.1 of the Property Acquisition Management Plan. The original report which was tabled at the April 23, 2013 meeting is attached, together with the updated TTC Construction Projects Property Acquisition Management Plan.

In addition to the foregoing, TTC has received notification of satisfaction from the Office of the Ombudsman that all recommendations made in the report have been complied with and the matter is being closed. Attached as Appendix A to this report is a copy of said notification dated May 1, 2013.

May 15, 2013
1-9
03-06-000104201

Attachments: 1) Appendix A: Letter from the Office of
the Ombudsman dated May 1, 2013
2) April 23, 2013 Board Report 8(c)
"Follow-Up to Ombudsman's Report
- Property Acquisition Management Plan"

Office of the
MBUDSMAN

Fiona Crean, Ombudsman
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CONFIDENTIAL

May 1, 2013

Mr. Andy Byford
Chief Executive Officer
Toronto Transit Commission
1900 Yonge Street
Toronto, ON M4S 1Z2

Dear Mr. Byford,

Re: File # 8062-8084

On October 22, 2012, I provided you with my final report of the investigation into the above noted matter. Included in my report were seven recommendations for the TTC's implementation.

I am writing to confirm that I am satisfied that the TTC has complied with all of my recommendations and the file on this matter will now be closed. If you have any further updated documents you may wish to send to my office, please forward them to my attention.

Thank you again for your leadership on this file. It has been very much appreciated.

Yours sincerely,



Fiona Crean
Ombudsman

Cc: Joseph Pennachetti, City Manager
Joan Taylor, Chief of Staff, Toronto Transit Commission

TORONTO TRANSIT COMMISSION

REPORT NO. 8(c)

MEETING DATE: April 24, 2013

SUBJECT: FOLLOW-UP TO OMBUDSMAN'S REPORT – PROPERTY ACQUISITION MANAGEMENT PLAN

ACTION ITEM

RECOMMENDATION

It is recommended that the Board endorse the attached Construction Projects Property Acquisition Management Plan.

FUNDING

There are no funding implications related to the recommendation of this report.

BACKGROUND

The Ombudsman's report dated October 2012 "*Tunnel Vision: An Investigation into the Toronto Transit Commission Second Exit Project at Donlands and Greenwood Stations*" was considered by Toronto City Council at its meeting on October 30, 2012 and the Ombudsman, Ms. Fiona Creen presented her report and findings to the TTC Board at its meeting on February 25, 2013.

The Ombudsman's report on the Donlands and Greenwood Stations Second Exits Projects includes a number of recommendations (attached) and the response of the TTC that commits to establishing a Community Relations Management Plan, Councillor Relations Policy, a Good Neighbour Policy and a Property Acquisition Management Plan. The first three of these commitments were provided to the TTC Board in February 2013 and the report noted that the Construction Projects Property Acquisition Management Plan would be submitted to the April 2013 TTC Board meeting.

DISCUSSION

The TTC Construction Projects Property Acquisition Management Plan (attached) sets out the approach for the identification of property in the project planning phase through to the acquisition and the communication with owners. It describes the role and responsibilities of the TTC and the City of Toronto Real Estate and Legal divisions to acquire the property. The Property Acquisition Management Plan sets out a number of means of communications with affected property owners, and where appropriate, tenants.

The approach and procedures articulated in the Property Acquisition Management Plan have been put into practice by the Engineering, Construction and Expansion Group and Property Development Department as part of modernizing the TTC.

The TTC Construction Project Property Acquisition Management Plan was prepared in consultation with the City of Toronto Real Estate Division.

CONCLUSION

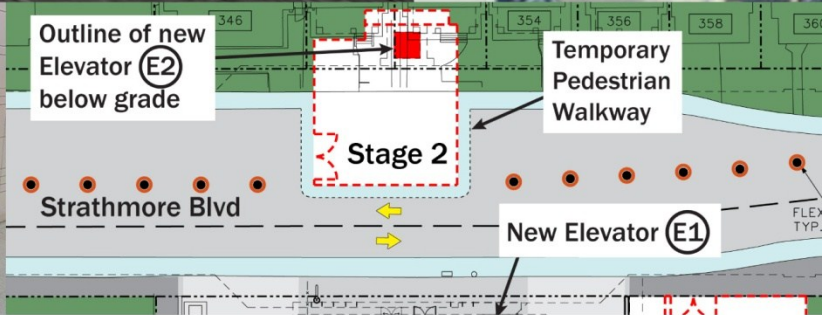
The TTC Construction Projects Property Acquisition Management Plan is part of the TTC's response to the Ombudsman's report and is a component of the modernizing the TTC approach to construction projects and relations with the public.

April 24, 2013
87-02-01
03-06-000103266

- Attachments:
1. TTC Construction Projects Property Acquisition Management Plan
 2. Excerpt from - Tunnel Vision: An Investigation into the Toronto Transit Commission Second Exit Projects at Donlands and Greenwood Station

TTC Construction Projects

Property Acquisition Management Plan



Prepared by TTC – Engineering, Construction and Expansion Group
Strategic Partnerships Department

April 2013



TORONTO TRANSIT COMMISSION

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1. INTRODUCTION

The TTC has an extensive capital construction program with many projects planned over the next ten years to improve customer safety, convenience and accessibility on the existing subway system. Many of these projects require additional property on a temporary or permanent basis.

This Construction Project Property Acquisition Management Plan sets out the approach and policies as well as roles and responsibilities for the acquisition of property and communication with affected property owners. This Plan should be read in conjunction with the TTC Construction Projects Community Relations Management Plan.

2. CONTEXT

TTC design of additions and improvements to existing subway stations is complex. Technical requirements of the building code, best practices for safety, and requirements of the Accessibility for Ontarians with Disabilities Act (AODA) for accessibility all impose significant requirements. In addition, the design of these projects aims to maximize value for money for taxpayers and minimize:

- the need for underground works and utility relocations;
- impacts on operations and inconvenience for TTC customers through construction;
- disruption for communities and adjacent properties; and
- project cost to ensure other projects can proceed.

The TTC recognizes that property acquisition for transit facilities, particularly in stable residential neighbourhoods, can be controversial and difficult for the affected property owners and the community.

3. TYPES OF PROPERTY REQUIREMENTS

TTC construction projects can require the following types of property acquisitions:

- permanent full takings such as an entire property;
- permanent partial takings such as a narrow strip of property or below grade requirement that will have limited impact on the residence or business occupying the site;
- temporary full property takings needed for the construction of the project; and
- temporary partial takings of small portions of property required during construction that are returned to the owner after construction.

All of these types of property acquisitions involve compensation to the property owner. All property required for TTC projects is acquired and owned by the City of Toronto and the TTC is provided with “operational management.”

On any construction project, property acquisition is a high risk activity. The required property must be identified through the design process and construction cannot start until all the property required for the project is acquired.

4. ROLES AND RESPONSIBILITIES

4.1 TTC

The TTC is responsible for developing the plan and design of the project and through this process identifies the property requirements.

Community consultation on various options for the design of a project may involve consideration of a number of properties. Where possible, the TTC will make every effort to use public property for projects. An important factor in the planning process is the availability of property and the willingness of a property owner to provide property.

Through the planning and design phase, the TTC is responsible for initiating contact with property owners regarding potential property requirements necessary to realize the project.

The TTC recognizes that acquisition of property for transit facilities, particularly in stable residential neighbourhoods can be difficult, often affecting long-term residents and tenants. As such, communication with property owners must be sensitive and must ensure that communication with affected owners and tenants is established prior to any public communication about the potential property requirements.

When the TTC finalizes the property requirements, staff report to the TTC Board on the final design of the project and property requirements. Following Board approval, the TTC will submit the property requirements to the City of Toronto Real Estate Services Division for the acquisition process to begin.

In order to more closely co-ordinate the property acquisition and specifically to ensure more effective communication with affected property owners, the TTC has established the Strategic Partnerships Department within the Engineering, Construction and Expansion Group. This department is responsible for co-ordinating property requirements for construction projects in consultation with the TTC's Property Development Department and is responsible for communications with affected property owners. The TTC will lead all meetings to discuss potential acquisitions with owners when in the planning stage of projects. City Real Estate staff can be called upon for information purpose and general real estate support.

4.2 City of Toronto - Real Estate Services and Legal Services

The City of Toronto, through Real Estate Services and Legal Services, has overall responsibility for property acquisition, including negotiation, expropriation, compensation and other activities as may be required.

The City point of contact is the Director of Real Estate Services. Real Estate Services staff will involve City Legal as required.

City Real Estate Services is responsible for keeping the TTC informed about the process and progress for the acquisition of required property, the need for initiating expropriation, the costs for the property and any other requirements that the City has for the acquisition of the property.

City Real Estate Services will lead all negotiations about specific property acquisition requirements with owners. TTC staff will be called upon for technical support about the project.

Whenever possible, City staff will negotiate with affected owners for required property. However, there are situations that will require initiation of the expropriation process. In order to initiate expropriation, Real Estate Services must obtain authorization from City Council through Government Management Committee.

In short, the TTC determines what property is required and City Real Estate Services acquires the property at TTC's request.

5. COMMUNICATION WITH AFFECTED PROPERTY OWNERS

Through its experience, the TTC realizes that acquiring property for projects can have a wide variety of reactions from affected property owners. Some owners are interested in selling or permitting TTC to use their property temporarily. Others, particularly residential owners, may not be willing to sell. In all cases, affected property owners do not want to be surprised by a design for a project that is communicated to the public before they have received proper notice.

Going forward, the TTC's approach to the planning and design of projects includes the following:

1. When the TTC plans a project that involves additional private property, the TTC will approach the property owner **as early as possible and not less than 2 weeks prior** to any public communication of the project design even if the design is still in the option development stage.
2. When the TTC consults with communities about the design of a project, and new options are proposed by the TTC or by the community for consideration, the TTC will contact the property owner to inform them of the consideration of their property and explicitly invite them to participate in the consultation. City Real Estate staff will attend public meetings and inform the public about how the acquisition process works.
3. TTC contact with property owners of properties under consideration may include:
 - a. Registered mail
 - b. Courier delivered mail
 - c. Phone calls
 - d. Personal visitsThe approach to communications will be considered on a case by case basis. Although registered mail is required for some notifications, other methods of communication may be appropriate in addition to or instead of registered mail.
4. In many cases, the property under consideration may be owned by an individual that does not occupy the premises. Tenants also have a right to know if the property they occupy is being considered for a project. It is recognized however that the acquisition of the property is between the City and the owner. The TTC will make every effort to ensure that tenants in properties under consideration are informed of the TTC planning that is underway.

5. In cases where the City pursues property acquisition for the TTC and relocation of tenants is required, the TTC will rely on the City's direction for compensation.

6. EXPROPRIATION – WHAT IT IS AND ISN'T?

Expropriation is a legal mechanism that permits a public body to acquire property without the consent of the owner for a public use. The owner is provided with an offer of compensation for the property based on a number of factors, including market value. The City of Toronto through the approval authority of City Council can and does use expropriation where necessary.

The expropriation process can take up to about 14 months. Because the process is so lengthy, often the City will initiate the expropriation process, but will make every effort to negotiate with the property owner to come to a mutually agreeable arrangement.

More information about expropriation and the City's process is available at:
www.toronto.ca/realestate/expropriations.htm.

Ombudsman Recommendations

Taking into account all the evidence gathered in this investigation, I recommend the following:

1. That the TTC develop a process/procedure by December 31, 2012, for notifying Councillors of new construction projects that are scheduled to take place in their wards.
2. That a communication policy and process be created by February 1, 2013, for notifying property owners of construction projects, and include but not be limited to the following:
 - i. Residents should be informed as early as possible about construction projects.
 - ii. Flyers should be distributed in appropriately marked envelopes.
 - iii. Information in the notice should clearly describe the nature of the project, its objectives and potential impact.
 - iv. A link to the TTC's website for additional information should be included and kept up to date.
 - v. Public consultation information, including a copy of or access to TTC's relevant policies and procedures.
3. That a documented process be developed by February 1, 2013, specifically for property owners facing potential acquisition. Such a process must include, but not be limited to:
 - i. Letters by registered mail to property owners directly affected by construction projects as early as possible.
 - ii. Those letters should be sent before general public notification about the project.
 - iii. The TTC should follow-up with each property owner within one week, to ensure that letters were received and understood.
 - iv. The TTC should inform property owners as early as possible about the procedures and expectations for using temporary easements on selected properties during the construction phase.
 - v. The opportunity to meet face-to-face with TTC staff before general public notification about the project.
 - vi. Access to relevant TTC's policies and procedures (eg. property acquisition and public consultation.)

4. That a public consultation policy and process be developed by December 31, 2012, to include, but not be limited to:
 - i. Ongoing information posts on the TTC website.
 - ii. Accessible information and regularly posted and updated on the website including: presentations, meetings notes, related reports or studies, status updates and any other information that may be relevant.
 - iii. If there is a lead representative for the community, it is the TTC's onus to communicate information to this representative.
 - iv. Opportunities for the public to provide feedback and participate in the decision making process.
5. That training be conducted by December 31, 2012, with relevant TTC staff to ensure they have the appropriate consultation and communication skills.
6. That communication/notice be sent from the CEO or a senior executive by November 30, 2013, regarding the current status of the Donlands and Greenwood Projects and next steps to be implemented along with timelines.
7. That directives be established by February 1, 2013, documenting the responsibilities of the TTC and the City's Real Estate Division to minimize role confusion and improve communication to the public.

12.0 City and TTC Responses

398. Before issuing my final report, I notified the TTC and the City Manager of my tentative findings and recommendations and provided them with an opportunity to make representations, pursuant to section 172(2) of the *City of Toronto Act, 2006*.
399. The City and the TTC provided points of clarification, which I considered and are reflected in my final report.
400. The TTC and City are in agreement with my seven recommendations and their associated timelines.
401. In its response, the City Manager outlined Real Estate's role in capital projects that require the acquisition of properties and explained that its involvement begins only after 30% of the design work has been completed and the final option has been selected. The City Manager outlined Real Estate's expropriation process in the event that acquisition is not successful. He clarified that while it is Real Estate's role to communicate details about construction projects to directly affected property owners in

relation to real estate matters, it is not Real Estate's role to communicate projects as a whole.

402. The City Manager articulated two factors that impeded efficient communication with the residents of Greenwood and Donlands. The first related to inadequate staffing due to a hiring freeze at the City, and the second was that the TTC contacted property owners before Council had fully approved the Project. In ensuring that this does not happen again, City Real Estate will work with the TTC to "establish roles and responsibilities to minimize role confusion and miscommunication."
403. The TTC's response acknowledged that in relation to the Greenwood and Donlands Projects, it did not adequately communicate or consult with the public.
404. On behalf of the TTC, the Chief Executive Officer (CEO) explained that TTC staff failed to properly communicate to the public technical information and engineering principles on which the Project was premised.
405. The CEO advised that prior to the release of my report, "the TTC recognized the need for significant changes in how we communicate with the public and their local councillors on construction projects and how we coordinate with City Real Estate and Legal Divisions regarding property acquisition."
406. The TTC has established an internal communications unit, "Strategic Partnerships" which "will be responsible for managing external interactions with the TTC including communications, community relations and property acquisition." This function, headed by a director, has already begun implementing my recommendations and is in the midst of developing a consultation program and protocol for communicating with Councillors on construction projects.
407. Strategic Partnerships will also liaise with City Real Estate and is "developing protocols and processes to ensure that affected property owners are well informed and that there is a clear delineation of roles and responsibilities and effective coordination between the TTC and the City of Toronto." The TTC will provide additional training in communications to "ensure staff increase and enhance their expertise and stay abreast of new innovations and best practices."
408. The TTC is revising public consultation practices to provide the public with an earlier opportunity to meaningfully participate with the TTC when new construction projects are proposed.

409. "Communication tools and procedures" are being developed to ensure that the public is "well informed of TTC construction projects." The CEO advised that the TTC will be providing information in plain language and will provide more access to information through its revamped website.
410. The CEO advised that all my recommendations will be addressed through its plans, policies, procedures and protocols, including: *TTC Construction Projects Property Acquisition Management Plan, TTC Construction Projects Community Relations and Communications Management Plan, TTC Construction Projects Property Acquisition Management and TTC Protocol Regarding Communicating with Councillors on Construction Projects.*
411. In recognizing the work that lies ahead in developing a new approach to "communications and community relations", the TTC is committed to strengthening and developing "better relationships with communities" to address my recommendations and to "excel at community consultation and engagement."

(Original signed)

Fiona Crean
Ombudsman
October 23, 2012

APPENDIX J – TTC Response

TORONTO TRANSIT COMMISSION



KAREN STINTZ
CHAIR
GUY CARLSON
VICE CHAIR
JAMES COOPER
VICE CHAIR
JENNIFER HARRIS
VICE CHAIR



MARIA AUGIERI
KARIMOND CHO
KISH COUF
PETER ARŁCZYN
JOHN PARKER



October 19, 2012

Ms. Fiona Crean
Ombudsman
City of Toronto
375 University Avenue, Suite 203
Toronto, Ontario
M5G 2J5

Dear Ms. Crean:

Re: Ombudsman Report

Thank you for the opportunity to review your draft report on "The Investigation into the Toronto Transit Commission Second Exit Projects and Donlands and Greenwood Stations". My executive team and I appreciate the thorough investigation into both the technical and process issues of these projects.

As a general comment, we agree with, and support, the recommendations in your report. The TTC recognizes that the Donlands and Greenwood Stations Second Exit projects were not handled properly from the perspective of community relations, public consultation, communications with affected property owners and communication regarding the rationale and technical issues. Although this pre-dated my appointment, I take responsibility for this and I am committed to ensuring that this does not happen again.

The TTC has developed the Second Exit program premised on technical information and engineering principles. We maintain that our design criteria and principles are appropriate. However, we do recognize, as articulated in your report that the TTC failed to properly communicate with the public. The TTC's construction is governed by highly technical and detailed standards, criteria and processes. We must do a better job of explaining to the public, in an understandable form, how and why our projects are designed the way they are.

Even prior to your report, the TTC recognized the need for significant changes in how we communicate with the public and their local councillors on construction projects and how we coordinate with City Real Estate and Legal Divisions regarding property acquisition. Early in 2012, the reorganization of the Engineering, Construction and Expansion Group was initiated and included the establishment of a separate dedicated department, Strategic Partnerships. This new department will be responsible for managing external interactions with the TTC including communications, community relations, and property acquisition. This department started working on TTC construction projects in the spring of 2012 and in June was fully established with a staff of 11, expected to increase to 15 by early 2013. I



am pleased to report that all of your recommendations are already being addressed through the management plans, policies, procedures and protocols that are in development.

With reference to your specific recommendations, we have the following comments.

The TTC is initiating a program that involves, over the course of a year, an update to each councillor on TTC projects planned in his/her ward over the next five years. We have already started this program. The TTC is also currently developing a program of consultation and updates to councillors on active construction projects. The *TTC Protocol Regarding Communicating with Councillors on Construction Projects* will be completed by December 31, 2012.

The TTC is developing communications tools and procedures to ensure communities, residents, businesses and institutions are well informed of TTC construction projects. These communications tools and procedures include consultation in the early design phases, outreach to inform the public regarding the implications of construction in advance of the construction start, close contact with residents who will be directly affected by construction adjacent to their property, and deployment of construction liaison staff to work as the advocate for the community throughout the course of the project. For every TTC construction project that has implications for the community, a communications plan will be developed to guide the public consultation, community relations, communications and construction liaison through the phases of the project.

The TTC is also committed to providing information in clear language. Technical information will be conveyed in language and graphics to ensure that the relevant issues are understood by the public.

The TTC is currently conducting a review of its website to improve the information and usability regarding construction projects.

The TTC has researched best practices for community information and outreach, and is implementing new approaches to providing information about construction projects to the public based on current best practices.

The *TTC Construction Projects Community Relations and Communications Management Plan* will incorporate these initiatives and is expected to be completed by December 31, 2012.

The City of Toronto acquires the property required by the TTC for construction projects. The TTC has recently reassigned internal responsibility for coordination of property requirements for construction projects and liaison with the City of Toronto Real Estate Division to the Strategic Partnerships Department within Engineering, Construction and Expansion. The TTC is currently developing protocols and processes to ensure that affected property owners are well informed and that there is a clear delineation of roles and responsibilities and effective coordination between the TTC and the City of Toronto.



Your recommendations will be addressed in the *TTC Construction Projects Property Acquisition Management Plan* expected to be completed by the end of February 2013.

In order to provide the public with more opportunity for meaningful input into TTC projects, we are revising the practices for public consultation by engaging the public earlier in the development of a project's concept and design. The TTC is committed to providing full information about all construction projects on the TTC website and we are reviewing and revamping the website to make it easier for the public to find the relevant information, and to participate in the consultation process on-line or through other social media. The *TTC Construction Projects Community Relations and Communications Management Plan* will specifically address public consultation. The TTC is also preparing a plain language communication plan about the Second Exit and other similar programs such as the Easier Access Program.

The Strategic Partnerships staff responsible for communications and community relations are trained communications specialists with extensive experience. The TTC will provide additional training to ensure staff increase and enhance their expertise and stay abreast of new innovations and best practices.

The TTC is committed to providing communications to the communities in the vicinity of the Donlands and Greenwood Stations to provide them with a project status, including next steps. A communications plan will be developed for the projects through the design and construction phases.

As part of the *TTC Construction Projects Property Acquisition Management* the TTC will work with the City of Toronto Real Estate Division to clearly define roles and responsibilities.

We appreciate that we were able to meet with you and your team to discuss the report. The TTC recognizes that it has significant work ahead to document and fully implement its new approach to communications and community relations, and to develop better relationships with communities to address your recommendations. We assure you that we are fully committed to these changes as they are part of our vision of modernizing the TTC, and they are consistent with my determination that from now on, the TTC will excel at community consultation and engagement.

Sincerely,



Andy Byford
Chief Executive Officer

55-04-03





STAFF SUMMARY SHEET

8(c)

ENGINEERING, CONSTRUCTION & EXPANSION GROUP

16122 CR

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SECTION: Strategic Partnerships


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BOARD REPORT: FOLLOW-UP TO OMBUDSMAN'S REPORT – PROPERTY ACQUISITION MANAGEMENT PLAN

#	ROUTING	CONCUR	NON-CONCUR	DATE	ATTACHMENT(S)	
	CHIEF OPERATING OFFICER				Board Report	
2	CHIEF CAPITAL OFFICER	A		4/4/13	Attachment 1	
	CHIEF CUSTOMER OFFICER				Attachment 2	
	CHIEF SERVICE OFFICER					
4	CHIEF FINANCIAL & ADMIN OFFICER	W		4/16/13	ACTION REQUIRED BY CHIEF EXECUTIVE OFFICER	
	HEAD OF FINANCE/TREASURER				<input type="checkbox"/> SIGN AGREEMENT <input type="checkbox"/> RECEIVE FOR INFORMATION <input type="checkbox"/> APPROVE <input checked="" type="checkbox"/> APPROVE FOR SUBMISSION TO COMMISSION <input type="checkbox"/> APPROVE FOR SUBMISSION TO CHAIR	
	HEAD OF HUMAN RESOURCES					
	HEAD OF M&P					
	HEAD OF LEGAL					
5	EXEC DIR CORP COMMUNICATIONS	MM		4/17/13		
1	HEAD OF STRATEGIC PARTNERSHIPS	Sameh		April 10/13	 SIGNATURE	
3	HEAD OF PROPERTY DEVELOPMENT	DE		April 14		DATE APR 17 2013
6	CHIEF OF STAFF	VF		April 11/13		